



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Dane K. FISHER *et al.*

Appln. No.: 09/394,745

Filed: September 15, 1999

Title: **Nucleic Acid Molecules and Other  
Molecules Associated with Plants**

Art Unit: 1637

Examiner: Young J. KIM

Atty. Docket: 38-21(15454)B

Confirm. No.: 4816

**Notice of Appeal from the Examiner to the  
Board of Patent Appeals and Interferences**

***Mail Stop Appeal Brief - Patents***

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Applicants hereby appeal to the Board of Patent Appeals and Interferences from the Petition Decision of the Examiner dated May 12, 2003, that resulted in Applicants having claims that have been twice or finally rejected.\*

Authorization to charge the official fees for this filing is given in the accompanying transmittal letter. A duplicate copy of this Notice is attached.

\* See attached Exhibit A.

Respectfully submitted,

*Thomas E. Kelley*

Thomas E. Kelley (Reg. No. 29,938)  
by David R. Marsh (Reg. No. 41,408)

Date: June 30, 2003

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BOARD OF PATENT APPEALS  
AND INTERFERENCES

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**Exhibit A**

A Notice of Appeal was previously filed in the U.S. Patent and Trademark Office (the "Office") on January 13, 2003, and a subsequent Appellant's Brief was filed on March 13, 2003, addressing the outstanding rejections under 35 U.S.C. §§ 101 and 112, first paragraph, for the above-captioned application. Appellant has also previously filed a Petition under 37 C.F.R. § 1.144 directed to the restriction requirement to select a single combination of nucleotide sequences for examination on January 10, 2003.

On February 14, 2003, the Office issued a Petition Decision denying Appellant's Petition under 37 C.F.R. § 1.144. Thereafter, Appellant filed a Request for Reconsideration of Applicants' Petition under 37 C.F.R. § 1.144, which was denied by the Office in the Petition Decision mailed May 12, 2003. Appellant submits the restriction requirement to select a single combination of nucleotide sequences by the Office amounts to a refusal by the Office to examine what Appellant regards as the invention. Therefore, Appellant submits the present claims have been twice rejected by the Petition Decision mailed May 12, 2003, and Appellant appeals this rejection to the Board of Patent Appeals and Interferences. Appellant further requests that the present appeal be consolidated with the appeal pending as a result of the Notice of Appeal filed on January 13, 2003.